IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

MACA.No. 79 of 2003(C)

(AGAINST AWARD DATED 27/04/2001 OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM IN OPMV.1867/1996)
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PETITIONER/PETITIONER:

ABDUL RASHEED, S/O. ABDUL KHADER,
EZHITHANIYIL HOUSE, KERALAPURAM, PERUMPUZHA P.O.,
KOLLAM.

BY ADV. SRI.S.SANTHOSH KUMAR

RESPONDENTS: RESPONDENTS:
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1. **SHAMSUDEEN, S/O. ABDULKHADER,**
   EZHUTHANIYIL HOUSE, PERUMPUZHA P.O.,
   KERALAPURAM, KOLLAM.

2. **KUNJURAMAN, KIZHAKKEVILA PUTHEN VEEDU,**
   EADAVATTAM, VELLIMON P.O., KERALAPURAM, KOLLAM.

3. **THE ORIENTAL INSURANCE CO.LTD.,**
   KOTTARA BRANCH, KOLAM.

4. **THE MANAGING DIRECTOR,**
   K.S.R.T.C., THIRUVANANTHAPURAM.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 14/09/2007. THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

J.B. KOSHY & K.HEMA, JJ.

M.A.C.A.No. 79 of 2003

Dated this the 14th day of September, 2007

Judgment

Koshy,J.

Appellant filed a claim for Rs.10,00,000/- before the Motor Accidents Claims Tribunal alleging that he is a building sub contractor undertaking supply of building materials. He hired lorry bearing registration No.KLU 9412 owned by the first respondent and driven by the second respondent for the purpose of transporting sand for his business. He was travelling in the lorry for taking the sand to the place of delivery on 18.5.1996. At about 8.30 a.m. when the lorry reached near Chandanathope I.T.I. in Kollam-Chencottah road, the lorry hit on a pedestrian, who was standing on the southern side of the road and the second respondent driver rashly and negligently turned the vehicle towards the north and thereupon the lorry hit the rear side of the K.S.R.T.C. bus, KL 15/687 which was parked on the northern side of the road. The appellant, who was sitting on the left side of the second respondent, sustained serious

injuries. The accident occurred solely due to the negligent and rash driving of the driver of the lorry. The appellant was admitted to Upasana Hospital, Kollam. He sustained crush injury on his left leg below knee and his left leg was amputated on 18.5.1996. He had also sustained crush injury causing fracture of right tibia and also extensive damage of skin and soft tissue and loss of muscles and bone of his right leg. He was subjected to various operations. He continued to be bed ridden in the hospital for a period of six months and discharged on 22.1.1997. His wounds in the right leg are not healed even now and he is continuing treatment. The appellant who was working as a sub contractor was aged 34 and was earning Rs.5,000/- per mensem. Due to the injuries, he was completely incapacitated and cannot even carry out his day-to-day activities without the help of others. The tribunal, therefore, found that the accident occurred due to the sole negligence of the second respondent driver of the lorry and the lorry was validly insured by the third respondent insurance company. Only an amount of Rs.3,09,600/- was awarded as total compensation including reimbursement of huge

medical expenses. Only quantum of compensation is disputed in this appeal.

2. As far as injuries sustained by the appellant is concerned, Ext.A6 is the copy of the wound certificate issued by the Upasana Hospital. Ext.A7 is the discharge card from Upasana Hospital proving that he was treated as an inpatient from 18.5.1996 to 22.1.1997 and he was subjected to two operations on 18.5.1996 and 2.9.1996. These documents prove that petitioner has sustained crush injury of the right leg below knee and crush injury to the left leg with muscle loss. It is stated in Ext.A7 that left leg below knee was beyond repair and to right leg extensive damage with muscle and skin loss. His left leg was amputated and the right leg was treated with debrident and suturing and external fixation. Exts.A8 and A9 are the treatment certificates issued from Upasana Hospital. Evidence would show that his left leg was amputated and right leg also sustained serious fracture and crush injury, but, it was not amputated due to appellant's objection. Tribunal found that he was continuing the treatment. Ext. A9 certificate issued from the hospital which treated him is as follows:

> "Sri.Abdul Rasheed aged about 30 years, R/o. Ezhuthaniyil Veedu, Keralapuram, Perumpuzha P.O. who was admitted in this hospital from 18.5.1996 to 22.1.1997 for crush injury (R) and (L) legs. He had to undergo amputation below knee (L) and operation of (R) leg was done.
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> He has got a permanent disability of about 50% (Fifty percent only)."

Medical Board attached to the District Hospital, Kollam also issued Ext.A10 disability certificate assessing 50% permanent disability according to McBride Scale. In the appeal proceedings also appellant produced certificate to show that he was continuing the treatment for chronic ostemyalitis tibia Rt. leg consequent to accident injuries. He also produced various bills to show that even after the accident, pending appeal proceedings, he is continuing the treatment and produced various medical bills to show that he was incurring heavy expenses even now for his treatment.

3. After considering the evidence, tribunal correctly found that claimant was a contractor supplying building materials to construction industries. Evidence of PW2 proved the same. He was aged 34 and maintaining a family. In fact, he met with the accident while

transporting sand in the lorry for construction industry, but, tribunal has taken only Rs.1,600/- as monthly income against a claim of Rs.5,000/-. Since he was a contractor for the supply of building materials and considering oral evidence of the claimant and PW2, we are of the opinion that at least Rs.2,500/- ought to have been fixed as the monthly income for the purpose of calculating compensation. The tribunal went wrong in reducing the percentage of disability on the reasoning that the claimant is having artificial limb and he could move about ad that he could engage in other works. Even though he is not entitled to compensation for 100% disability, tribunal ought to have awarded compensation for 50% disability and as a contractor he has to do the work with the above disability. Apart from amputation of one leg, other leg is also suffered serious injury and it was also noticed. There is no reason to change the percentage of disability assessed by the medical board. The Tribunal has taken 15 as the multiplier. If second schedule is taken for guidance, 17 is the multiplier for a 34 year motor accident victim and Apex Court has repeatedly held that second schedule shall be taken for guidance to grant multiplier. (See: Three member bench

decision in Smt.Supe Dei and others v. M/s.National Insurance Company Ltd. and another (JT 2002 (Suppl.1) SC 451). We take 16 as the multiplier. If that be so, compensation payable for continuing disability and loss of earning power will be Rs.2,500 x 12 x 50 x 16 =
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Rs.2,40,000/-. Tribunal has granted only Rs.1,00,800/- under this head. Hence, claimant is entitled to an additional compensation of Rs.1,39,200/- under this head. For actual loss of earning for eight months' treatment period, tribunal has granted Rs.10,800/-. Since we have increased monthly income, for eight months' period of treatment, actual loss of earning will be Rs.2,500 x 8 = Rs.20,000/-. Hence, additional compensation payable under this head will be Rs.9,200/-. In Nagappa v. Gurudayal Singh and others (2002 AIR SCW 5348), a three member bench of the Supreme Court held that it is for the court to grant future medical expenses taking into account the inflation factor and cost of medical treatment etc. Here, there is evidence to show that he is continuing medical treatment for the right leg and need to change the of artificial leg for the left leg amputated. Only Rs.10,000/- was awarded for future

medical expenses. We are of the opinion that an amount of Rs.25,000/- more ought to have been awarded for future medical expenses. Even though it was argued that expenses granted under all other heads are inadequate, considering the total amount awarded, we are not granting enhancement on other heads. Thus, total additional compensation payable over and above the decreed amount by the tribunal will be Rs.1,73,400/-. Rs.1,48,400/- shall be deposited by the third respondent insurance company with 7% interest from the date of application and Rs.25,000/- (granted for future medical expenses) with 7% interest per annum from the date of the award till today. On deposit of the amount, appellant is allowed to withdraw one-third of the same. Balance amount shall be deposited in a nationalised bank for five years with right to the claimant to draw periodical interest.

J.B.KOSHY
JUDGE

K. HEMA
JUDGE

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.A.C.A.NO.79 of 2003

Judgment

Dated:14th September, 2007